

## **Chapter 12**

### **Public Employees' Contributory Retirement Act**

#### **Part 1**

#### **General Provisions**

#### **49-12-101 Title.**

This chapter is known as the "Public Employees' Contributory Retirement Act."

Renumbered and Amended by Chapter 250, 2002 General Session

#### **49-12-102 Definitions.**

As used in this chapter:

(1) "Benefits normally provided":

(a) means a benefit offered by an employer, including:

- (i) a leave benefit of any kind;
- (ii) insurance coverage of any kind if the employer pays some or all of the premium for the coverage;
- (iii) employer contributions to a health savings account, health reimbursement account, health reimbursement arrangement, or medical expense reimbursement plan; and
- (iv) a retirement benefit of any kind if the employer pays some or all of the cost of the benefit; and

(b) does not include:

- (i) a payment for social security;
- (ii) workers' compensation insurance;
- (iii) unemployment insurance;
- (iv) a payment for Medicare;
- (v) a payment or insurance required by federal or state law that is similar to a payment or insurance listed in Subsection (1)(b)(i), (ii), (iii), or (iv);
- (vi) any other benefit that state or federal law requires an employer to provide an employee who would not otherwise be eligible to receive the benefit; or
- (vii) any benefit that an employer provides an employee in order to avoid a penalty or tax under the Patient Protection and Affordable Care Act, Pub. L. No. 111-148 and the Health Care Education Reconciliation Act of 2010, Pub. L. No. 111-152, and related federal regulations, including a penalty imposed by Internal Revenue Code, Section 4980H.

(2)

(a) "Compensation" means, except as provided in Subsection (2)(c), the total amount of payments made by a participating employer to a member of this system for services rendered to the participating employer, including:

- (i) bonuses;
- (ii) cost-of-living adjustments;
- (iii) other payments currently includable in gross income and that are subject to social security deductions, including any payments in excess of the maximum amount subject to deduction under social security law;
- (iv) amounts that the member authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; and
- (v) member contributions.

- (b) "Compensation" for purposes of this chapter may not exceed the amount allowed under Internal Revenue Code, Section 401(a)(17).
- (c) "Compensation" does not include:
  - (i) the monetary value of remuneration paid in kind, including a residence or use of equipment;
  - (ii) the cost of any employment benefits paid for by the participating employer;
  - (iii) compensation paid to a temporary employee, an exempt employee, or an employee otherwise ineligible for service credit;
  - (iv) any payments upon termination, including accumulated vacation, sick leave payments, severance payments, compensatory time payments, or any other special payments; or
  - (v) any allowances or payments to a member for costs or expenses paid by the participating employer, including automobile costs, uniform costs, travel costs, tuition costs, housing costs, insurance costs, equipment costs, and dependent care costs.
- (d) The executive director may determine if a payment not listed under this Subsection (2) falls within the definition of compensation.
- (3) "Final average salary" means the amount calculated by averaging the highest five years of annual compensation preceding retirement subject to Subsections (3)(a), (b), (c), (d), and (e).
  - (a) Except as provided in Subsection (3)(b), the percentage increase in annual compensation in any one of the years used may not exceed the previous year's compensation by more than 10% plus a cost-of-living adjustment equal to the decrease in the purchasing power of the dollar during the previous year, as measured by a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
  - (b) In cases where the participating employer provides acceptable documentation to the office, the limitation in Subsection (3)(a) may be exceeded if:
    - (i) the member has transferred from another agency; or
    - (ii) the member has been promoted to a new position.
  - (c) If the member retires more than six months from the date of termination of employment, the member is considered to have been in service at the member's last rate of pay from the date of the termination of employment to the effective date of retirement for purposes of computing the member's final average salary only.
  - (d) If the member has less than five years of service credit in this system, final average salary means the average annual compensation paid to the member during the full period of service credit.
  - (e) The annual compensation used to calculate final average salary shall be based on:
    - (i) a calendar year for a member employed by a participating employer that is not an educational institution; or
    - (ii) a contract year for a member employed by an educational institution.
- (4) "Participating employer" means an employer which meets the participation requirements of Sections 49-12-201 and 49-12-202.
- (5)
  - (a) "Regular full-time employee" means an employee whose term of employment for a participating employer contemplates continued employment during a fiscal or calendar year and whose employment normally requires an average of 20 hours or more per week, except as modified by the board, and who receives benefits normally provided by the participating employer.
  - (b) "Regular full-time employee" includes:
    - (i) a teacher whose term of employment for a participating employer contemplates continued employment during a school year and who teaches half-time or more;
    - (ii) a classified school employee;

- (A) who is hired before July 1, 2013; and
  - (B) whose employment normally requires an average of 20 hours per week or more for a participating employer, regardless of benefits provided;
  - (iii) an officer, elective or appointive, who earns \$500 or more per month, indexed as of January 1, 1990, as provided in Section 49-12-407;
  - (iv) a faculty member or employee of an institution of higher education who is considered full-time by that institution of higher education; and
  - (v) an individual who otherwise meets the definition of this Subsection (5) who performs services for a participating employer through a professional employer organization or similar arrangement.
- (c) "Regular full-time employee" does not include a classified school employee:
- (i)
    - (A) who is hired on or after July 1, 2013; and
    - (B) who does not receive benefits normally provided by the participating employer even if the employment normally requires an average of 20 hours per week or more for a participating employer;
  - (ii)
    - (A) who is hired before July 1, 2013;
    - (B) who did not qualify as a regular full-time employee before July 1, 2013;
    - (C) who does not receive benefits normally provided by the participating employer; and
    - (D) whose employment hours are increased on or after July 1, 2013, to require an average of 20 hours per week or more for a participating employer; or
  - (iii) who is a person working on a contract:
    - (A) for the purposes of vocational rehabilitation and the employment and training of people with significant disabilities; and
    - (B) that has been set aside from procurement requirements by the state pursuant to Section 63G-6a-805 or the federal government pursuant to 41 U.S.C. Sec. 8501 et seq.
- (6) "System" means the Public Employees' Contributory Retirement System created under this chapter.
- (7) "Years of service credit" means:
- (a) a period consisting of 12 full months as determined by the board;
  - (b) a period determined by the board, whether consecutive or not, during which a regular full-time employee performed services for a participating employer, including any time the regular full-time employee was absent on a paid leave of absence granted by a participating employer or was absent in the service of the United States government on military duty as provided by this chapter; or
  - (c) the regular school year consisting of not less than eight months of full-time service for a regular full-time employee of an educational institution.

Amended by Chapter 227, 2016 General Session  
Amended by Chapter 304, 2016 General Session

#### **49-12-103 Creation of system.**

There is created for members employed by a participating employer the "Public Employees' Contributory Retirement System."

Renumbered and Amended by Chapter 250, 2002 General Session

**49-12-104 Creation of trust fund.**

- (1) There is created the "Public Employees' Contributory Retirement Trust Fund" for the purpose of paying the benefits and costs of administering this system.
- (2) The fund shall consist of all money paid into it, including interest, in accordance with this chapter, whether in the form of cash, securities, or other assets, and of all money received from any other source.
- (3) Custody, management, and investment of the fund shall be governed by Chapter 11, Utah State Retirement Systems Administration.

Renumbered and Amended by Chapter 250, 2002 General Session

**Part 2**  
**Membership Eligibility**

**49-12-201 System membership -- Eligibility.**

- (1) A regular full-time employee of a participating employer is eligible for service credit in this system upon the later of:
  - (a) the date on which the participating employer began participating in this system; or
  - (b) the effective date of employment of the regular full-time employee with the participating employer.
- (2) Beginning July 1, 1986, a person entering employment with the state and its educational institutions may not participate in this system.
- (3) Notwithstanding the provisions of Subsection (1), a person initially entering employment with a participating employer on or after July 1, 2011, who does not have service credit accrued before July 1, 2011, in a Tier I system or plan administered by the board, may not participate in this system.

Amended by Chapter 15, 2014 General Session

**49-12-202 Participation of employers -- Limitations -- Exclusions -- Admission requirements -- Exceptions -- Nondiscrimination requirements.**

- (1)
  - (a) Unless excluded under Subsection (2), an employer is a participating employer and may not withdraw from participation in this system.
  - (b) In addition to their participation in this system, participating employers may provide or participate in public or private retirement, supplemental or defined contribution plan, either directly or indirectly, for their employees.
- (2) The following employers may be excluded from participation in this system:
  - (a) an employer not initially admitted or included as a participating employer in this system prior to January 1, 1982 if:
    - (i) the employer elects not to provide or participate in any type of private or public retirement, supplemental or defined contribution plan, either directly or indirectly, for its employees, except for Social Security; or
    - (ii) the employer offers another collectively bargained retirement benefit and has continued to do so on an uninterrupted basis since that date;

- (b) an employer that is a charter school authorized under Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act, and does not elect to participate in accordance with Section 53A-1a-512;
  - (c) an employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, that makes an election of nonparticipation in accordance with Subsection (4); or
  - (d) an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state that makes an election of nonparticipation in accordance with Subsection (4).
- (3) An employer who did not become a participating employer in this system prior to July 1, 1986, may not participate in this system.
- (4)
- (a)
    - (i) Until June 30, 2009, a employer that is a hospital created as a special service district under Title 17D, Chapter 1, Special Service District Act, may make an election of nonparticipation as an employer for retirement programs under this chapter.
    - (ii) Until June 30, 2014, an employer that is licensed as a nursing care facility under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, and created as a special service district under Title 17D, Chapter 1, Special Service District Act, in a rural area of the state may make an election of nonparticipation as an employer for retirement programs under this chapter.
  - (b) An election provided under Subsection (4)(a):
    - (i) is a one-time election made no later than the time specified under Subsection (4)(a);
    - (ii) shall be documented by a resolution adopted by the governing body of the special service district;
    - (iii) is irrevocable; and
    - (iv) applies to the special service district as the employer and to all employees of the special service district.
  - (c) The governing body of the special service district may offer employee benefit plans for its employees:
    - (i) under Title 49, Chapter 20, Public Employees' Benefit and Insurance Program Act; or
    - (ii) under any other program.
- (5)
- (a) If a participating employer purchases service credit on behalf of regular full-time employees for service rendered prior to the participating employer's admission to this system, the service credit shall be purchased in a nondiscriminatory manner on behalf of all current and former regular full-time employees who were eligible for service credit at the time service was rendered.
  - (b) For a purchase made under this Subsection (5), an employee is not required to:
    - (i) have at least four years of service credit before the purchase can be made; or
    - (ii) forfeit service credit or any defined contribution balance based on the employer contributions under any other retirement system or plan based on the period of employment for which service credit is being purchased.

Amended by Chapter 15, 2014 General Session  
Amended by Chapter 201, 2014 General Session  
Amended by Chapter 363, 2014 General Session

**49-12-203 Exclusions from membership in system.**

- (1) The following employees are not eligible for service credit in this system:
  - (a) subject to the requirements of Subsection (2), an employee whose employment status is temporary in nature due to the nature or the type of work to be performed;
  - (b) except as provided under Subsection (3)(a), an employee of an institution of higher education who participates in a retirement system with a public or private retirement system, organization, or company designated by the State Board of Regents during any period in which required contributions based on compensation have been paid on behalf of the employee by the employer;
  - (c) an employee serving as an exchange employee from outside the state;
  - (d) an executive department head of the state, a member of the State Tax Commission, the Public Service Commission, and a member of a full-time or part-time board or commission who files a formal request for exemption;
  - (e) an employee of the Department of Workforce Services who is covered under another retirement system allowed under Title 35A, Chapter 4, Employment Security Act;
  - (f) an employee who is employed on or after July 1, 2009, with an employer that has elected, prior to July 1, 2009, to be excluded from participation in this system under Subsection 49-12-202(2)(c);
  - (g) an employee who is employed on or after July 1, 2014, with an employer that has elected, prior to July 1, 2014, to be excluded from participation in this system under Subsection 49-12-202(2)(d); or
  - (h) an employee who is employed with a withdrawing entity that has elected, prior to January 1, 2017, to exclude:
    - (i) new employees from participation in this system under Subsection 49-11-623(3)(a); or
    - (ii) all employees from participation in this system under Subsection 49-11-623(3)(b).
- (2) If an employee whose status is temporary in nature due to the nature of type of work to be performed:
  - (a) is employed for a term that exceeds six months and the employee otherwise qualifies for service credit in this system, the participating employer shall report and certify to the office that the employee is a regular full-time employee effective the beginning of the seventh month of employment; or
  - (b) was previously terminated prior to being eligible for service credit in this system and is reemployed within three months of termination by the same participating employer, the participating employer shall report and certify that the member is a regular full-time employee when the total of the periods of employment equals six months and the employee otherwise qualifies for service credits in this system.
- (3)
  - (a) Upon cessation of the participating employer contributions, an employee under Subsection (1)(b) is eligible for service credit in this system.
  - (b) Notwithstanding the provisions of Subsection (1)(f), any eligibility for service credit earned by an employee under this chapter before July 1, 2009 is not affected under Subsection (1)(f).
  - (c) Notwithstanding the provisions of Subsection (1)(g), any eligibility for service credit earned by an employee under this chapter before July 1, 2014, is not affected under Subsection (1)(g).
- (4) Upon filing a written request for exemption with the office, the following employees shall be exempt from coverage under this system:
  - (a) a full-time student or the spouse of a full-time student and individuals employed in a trainee relationship;

- (b) an elected official;
  - (c) an executive department head of the state, a member of the State Tax Commission, a member of the Public Service Commission, and a member of a full-time or part-time board or commission;
  - (d) an employee of the Governor's Office of Management and Budget;
  - (e) an employee of the Governor's Office of Economic Development;
  - (f) an employee of the Commission on Criminal and Juvenile Justice;
  - (g) an employee of the Governor's Office;
  - (h) an employee of the State Auditor's Office;
  - (i) an employee of the State Treasurer's Office;
  - (j) any other member who is permitted to make an election under Section 49-11-406;
  - (k) a person appointed as a city manager or chief city administrator or another person employed by a municipality, county, or other political subdivision, who is an at-will employee; and
  - (l) an employee of an interlocal cooperative agency created under Title 11, Chapter 13, Interlocal Cooperation Act, who is engaged in a specialized trade customarily provided through membership in a labor organization that provides retirement benefits to its members.
- (5)
- (a) Each participating employer shall prepare a list designating those positions eligible for exemption under Subsection (4).
  - (b) An employee may not be exempted unless the employee is employed in an exempted position designated by the participating employer.
- (6)
- (a) In accordance with this section, Section 49-13-203, and Section 49-22-205, a municipality, county, or political subdivision may not exempt a total of more than 50 positions or a number equal to 10% of the employees of the municipality, county, or political subdivision, whichever is less.
  - (b) A municipality, county, or political subdivision may exempt at least one regular full-time employee.
- (7) Each participating employer shall:
- (a) file employee exemptions annually with the office; and
  - (b) update the employee exemptions in the event of any change.
- (8) The office may make rules to implement this section.

Amended by Chapter 315, 2015 General Session

Amended by Chapter 364, 2015 General Session

**49-12-204 Higher education employees' eligibility requirements -- Election between different retirement plans -- Classification requirements -- Transfer between systems -- One-time election window -- Rulemaking.**

- (1)
- (a) A regular full-time employee of an institution of higher education who is eligible to participate in either this system or a public or private retirement system, organization, or company, designated by the Board of Regents, shall, not later than January 1, 1979, elect to participate exclusively in this system or in an annuity contract allowed under this Subsection (1).
  - (b) The election is final, and no right exists to make any further election.
- (2)

- (a) Except as provided under Subsection (2)(c), a regular full-time employee hired by an institution of higher education after January 1, 1979, may participate only in the retirement plan which attaches to the person's employment classification.
- (b) Each institution of higher education shall prepare or amend existing employment classifications, under the direction of the Board of Regents, so that each classification is assigned with either:
  - (i) this system; or
  - (ii) a public or private system, organization, or company designated by the Board of Regents.
- (c) Notwithstanding a person's employment classification assignment under Subsection (2)(b), a regular full-time employee who begins employment with an institution of higher education on or after May 11, 2010, has a one-time irrevocable election to continue participation in this system, if the employee has service credit in this system before the date of employment.
- (3) Notwithstanding an employment classification assignment change made under Subsection (2)(b), a regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system may elect to continue participation in this system.
- (4) A regular full-time employee hired by an institution of higher education after January 1, 1979, whose employment classification requires participation in this system shall participate in this system.
- (5)
  - (a) Notwithstanding any other provision of this section, a regular full-time employee of an institution of higher education shall have a one-time irrevocable election to participate in this system if the employee:
    - (i) was hired after January 1, 1979;
    - (ii) whose employment classification assignment under Subsection (2)(b) required participation in a retirement program other than this system; and
    - (iii) has service credit in a system under this title.
  - (b) The election under Subsection (5)(a) shall be made before June 30, 2010.
  - (c) All forms required by the office must be completed and received by the office no later than June 30, 2010, for the election to participate in this system to be effective.
  - (d) Beginning July 1, 2010, a regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (5)(a) may begin to accrue service credit in this system.
- (6) A regular full-time employee of an institution of higher education who elects to be covered by this system under Subsection (2)(c) or (5)(a), may purchase periods of employment while covered under another retirement program sponsored by the institution of higher education by complying with the requirements of Section 49-11-403.
- (7) The board shall make rules to implement this section.

Amended by Chapter 15, 2014 General Session

### **Part 3**

### **Contributions**



**49-12-301 Contributions -- Two levels -- Election by a participating employer to pay employee contributions -- Accounting for and vesting of member contributions -- Deductions.**

- (1) Participating employers and members shall jointly pay the certified contribution rates to the office to maintain this system on a financially and actuarially sound basis.
- (2) For purposes of determining contribution rates, this system is divided into two levels according to participating employers as follows:
  - (a) Level A includes the state, its independent agencies, independent entities, public corporations, and other instrumentalities, all participating educational institutions, and all other participating employers whose activities are associated with participating educational institutions.
  - (b) Level B includes all other participating employers in this system.
- (3)
  - (a) A participating employer may elect to pay all or part of the required member contributions, in addition to the required participating employer contributions.
  - (b) Any amount contributed by a participating employer under this section shall vest to the member's benefit as though the member had made the contribution.
  - (c) The required member contributions shall be reduced by the amount that is paid by the participating employer.
- (4)
  - (a) All member contributions are credited by the office to the account of the individual member.
  - (b) This amount, together with refund interest, is held in trust for the payment of benefits to the member or the member's beneficiaries.
  - (c) All member contributions are vested and nonforfeitable.
- (5)
  - (a) Each member is considered to consent to payroll deductions of member contributions.
  - (b) The payment of compensation less these payroll deductions is considered full payment for services rendered by the member.

Renumbered and Amended by Chapter 250, 2002 General Session

**49-12-302 Purchase of service credit.**

Any member who works 20 or more hours per week for a participating employer participating in this system, but does not meet other eligibility requirements for service credit, may purchase the service credit in accordance with Section 49-11-403.

Enacted by Chapter 250, 2002 General Session

**Part 4  
Defined Benefit**

**49-12-401 Eligibility for an allowance -- Date of retirement -- Qualifications.**

- (1) A member is qualified to receive an allowance from this system when:
  - (a) except as provided under Subsection (3), the member ceases actual work for every participating employer that employs the member before the member's retirement date and provides evidence of the termination;

- (b) the member has submitted to the office a retirement application form that states the member's proposed retirement date; and
- (c) one of the following conditions is met as of the member's retirement date:
  - (i) the member has accrued at least four years of service credit and has attained an age of 65 years;
  - (ii) the member has accrued at least 10 years of service credit and has attained an age of 62 years;
  - (iii) the member has accrued at least 20 years of service credit and has attained an age of 60 years; or
  - (iv) the member has accrued at least 30 years of service credit.
- (2)
  - (a) The member's retirement date:
    - (i) shall be the 1st or the 16th day of the month, as selected by the member;
    - (ii) shall be on or after the date of termination; and
    - (iii) may not be more than 90 days before or after the date the application is received by the office.
  - (b) Except as provided under Subsection (3), a member may not be employed by a participating employer in the system established by this chapter on the retirement date selected under Subsection (2)(a)(i).
- (3)
  - (a) A member who is employed by a participating employer and who is also an elected official is not required to cease service as an elected official to be qualified to receive an allowance under Subsection (1), unless the member is retiring from service as an elected official.
  - (b) A member who is employed by a participating employer and who is also a part-time appointed board member is not required to cease service as a part-time appointed board member to be qualified to receive an allowance under Subsection (1).
  - (c) A member who is employed by a participating employer, who is also an affiliated emergency services worker as defined in Section 49-11-1202 for a different agency, is not required to cease service as an affiliated emergency services worker to be qualified to receive an allowance under Subsection (1).

Amended by Chapter 310, 2016 General Session

**49-12-402 Service retirement plans -- Calculation of retirement allowance -- Social Security limitations.**

- (1)
  - (a) Except as provided under Section 49-12-701, retirees of this system may choose from the six retirement options described in this section.
  - (b) Options Two, Three, Four, Five, and Six are modifications of the Option One calculation.
- (2) The Option One benefit is an annual allowance calculated as follows:
  - (a) If the retiree is at least 65 years of age or has accrued at least 30 years of service credit, the allowance is:
    - (i) an amount equal to 1.25% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued prior to July 1, 1975; plus
    - (ii) an amount equal to 2% of the retiree's final average monthly salary multiplied by the number of years of service credit accrued on and after July 1, 1975.

- (b) If the retiree is less than 65 years of age, the allowance shall be reduced 3% for each year of retirement from age 60 to age 65, unless the member has 30 or more years of accrued credit in which event no reduction is made to the allowance.
- (c)
  - (i) Years of service includes any fractions of years of service to which the retiree may be entitled.
  - (ii) At the time of retirement, if a retiree's combined years of actual, not purchased, service credit is within 1/10 of one year of the total years of service credit required for retirement, the retiree shall be considered to have the total years of service credit required for retirement.
- (d) An Option One allowance is only payable to the member during the member's lifetime.
- (3) The allowance payable under Options Two, Three, Four, Five, and Six is calculated by reducing an Option One benefit based on actuarial computations to provide the following:
  - (a) Option Two is a reduced allowance paid to and throughout the lifetime of the retiree, and, if the retiree receives less in annuity payments than the amount of the retiree's member contributions, the remaining balance of the retiree's member contributions shall be paid in accordance with Sections 49-11-609 and 49-11-610.
  - (b) Option Three is a reduced allowance paid to and throughout the lifetime of the retiree, and, upon the death of the retiree, the same reduced allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
  - (c) Option Four is a reduced allowance paid to and throughout the lifetime of the retiree, and upon the death of the retiree, an amount equal to 1/2 of the retiree's allowance paid to and throughout the lifetime of the retiree's lawful spouse at the time of retirement.
  - (d) Option Five is a modification of Option Three so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:
    - (i) spouse died, if the application is received by the office within 90 days of the spouse's death; or
    - (ii) application is received by the office, if the application is received by the office more than 90 days after the spouse's death.
  - (e) Option Six is a modification of Option Four so that if the lawful spouse at the time of retirement predeceases the retiree, an allowance equivalent to the amount payable at the time of initial retirement under Option One shall be paid to the retiree for the remainder of the retiree's life, beginning on the first day of the month following the month in which the:
    - (i) spouse died, if the application is received by the office within 90 days of the spouse's death; or
    - (ii) application is received by the office, if the application is received by the office more than 90 days after the spouse's death.
- (4)
  - (a)
    - (i) The final average salary is limited in the computation of that part of an allowance based on service rendered prior to July 1, 1967, during a period when the retiree received employer contributions on a portion of compensation from an educational institution toward the payment of the premium required on a retirement annuity contract with a public or private system, organization, or company designated by the State Board of Regents to \$4,800.
    - (ii) This limitation is not applicable to retirees who elected to continue in this system by July 1, 1967.

- (b) Periods of employment which are exempt from this system under Subsection 49-12-203(1) (b), may be purchased by the member for the purpose of retirement only if all benefits from a public or private system, organization, or company designated by the State Board of Regents based on this period of employment are forfeited.
- (5)
  - (a) If a retiree under Option One dies within 90 days after the retiree's retirement date, the retirement is canceled and the death shall be considered as that of a member before retirement.
  - (b) Any payments made to the retiree shall be deducted from the amounts due to the beneficiary.
- (6) If a retiree retires under either Option Five or Six and subsequently divorces, the retiree may elect to convert the benefit to a Option One benefit at the time of divorce, if there is no court order filed in the matter.

Amended by Chapter 15, 2014 General Session

**49-12-403 Allowance payable by lump sum payment.**

- (1) If a retiree's allowance, as computed under this chapter, amounts to \$25 or less, the allowance may be settled by the office by making a lump-sum payment of an amount actuarially equivalent to the allowance.
- (2) A payment made under this section constitutes a full and complete settlement of the retiree's claim against this system.

Renumbered and Amended by Chapter 250, 2002 General Session

**49-12-404 Lump-sum death benefit for retiree and spouse.**

- (1)
  - (a) Upon retirement, a retiree may elect to have the office deduct an actuarially determined amount from the retiree's allowance to provide a lump-sum benefit payable to a beneficiary upon the death of the retiree.
  - (b) Upon retirement, a retiree may also elect to have an actuarially determined amount deducted from the retiree's allowance to provide a lump-sum death benefit payable to a beneficiary upon the death of the retiree's lawful spouse at the time of retirement.
  - (c) The board may make rules for the administration of this lump-sum death benefit.
- (2)
  - (a) For a retiree who pays for a lump-sum death benefit under this section through a reduction of an allowance, benefits shall be paid in accordance with Sections 49-11-609 and 49-11-610.
  - (b) If the retiree chooses Option Three, Four, Five, or Six, and a lump-sum death benefit is payable after the death of the retiree, the allowance shall be restored to its original amount.
- (3)
  - (a) A retiree whose retirement date is on or after July 1, 1995, may elect to cancel the lump-sum death benefit under this section.
  - (b) The cancellation under this Subsection (3) is irrevocable.
  - (c) Upon cancellation, the allowance shall be restored to its original amount and benefits under this section may not be paid.

Amended by Chapter 118, 2004 General Session

**49-12-405 Death of married member -- Service retirement benefits to surviving spouse.**

- (1) Upon the request of a deceased member's surviving spouse, the deceased member is considered to have retired under Option Three on the first day of the month following the month in which the member died if the following requirements are met:
  - (a) the member has:
    - (i) 25 or more years of service credit;
    - (ii) attained age 60 with 20 or more years of service credit;
    - (iii) attained age 62 with 10 or more years of service credit; or
    - (iv) attained age 65 with four or more years of service credit; and
  - (b) the member dies leaving a surviving spouse.
- (2) The surviving spouse who requests a benefit under this section shall apply in writing to the office. The allowance shall begin on the first day of the month:
  - (a) following the month in which the member died, if the application is received by the office within 90 days of the member's death; or
  - (b) following the month in which the application is received by the office, if the application is received by the office more than 90 days after the member's death.
- (3) The Option Three benefit calculation, when there are 25 or more years of service credit, shall be calculated without a reduction in allowance under Section 49-12-402.
- (4) The benefit calculation for a surviving spouse with a valid domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612 is calculated according to the manner in which the court order specified benefits to be partitioned, whether as a fixed amount or as a percentage of the benefit.
- (5) Except for a return of member contributions, benefits payable under this section are retirement benefits and shall be paid in addition to any payments made under Section 49-12-501 and constitute a full and final settlement of the claim of the surviving spouse or any other beneficiary filing claim for benefits under Section 49-12-501.
- (6) If the death benefits under this section are partitioned among more than one surviving spouse due to domestic relations order benefits on file with the office before the member's death date in accordance with Section 49-11-612, the total amount received by the surviving spouses may not exceed the death benefits normally provided to one surviving spouse under this section.

Amended by Chapter 84, 2016 General Session

**49-12-406 Exceptions for part-time elective or appointive service -- Computation of allowance -- Justice court judges.**

- (1) Notwithstanding the provisions of Sections 49-11-401 and 49-12-102, and unless otherwise provided in this section, a member's elective or appointive service rendered on a basis not considered full-time by the office shall have a separate allowance computed on the basis of compensation actually received by the member during the period of elective or appointive service.
- (2)
  - (a) A justice court judge who has service with only one participating employer shall be considered part-time or full-time by the office as certified by the participating employer.
  - (b) If a justice court judge has a combination of part-time service and full-time position service with one participating employer, the office shall compute separate allowances on the basis of compensation actually received by the judge during the part-time and full-time periods of service.
- (3)

- (a) A justice court judge who has service with more than one participating employer shall be considered full-time by the office for a period of service in which the judge is certified as full-time by:
  - (i) a participating employer; or
  - (ii) the Administrative Office of the Courts beginning on or after January 1, 2009, based on the judge's aggregate caseload of the multiple employers as determined by the judge's caseloads of the individual courts of each employer in accordance with Subsection 78A-7-206(1)(b)(ii).
- (b) If a justice court judge has full-time service under Subsection (3)(a), the office shall compute an allowance on the basis of total compensation actually received from all participating employers by the judge during the total period of full-time service.
- (c) If a justice court judge has part-time service performed that is not within a period considered full-time service under Subsection (3)(a), the office shall compute a separate allowance on the basis of compensation actually received by the member during the period of part-time service.
- (4) All of the service rendered by a justice court judge in any one fiscal or calendar year may not count for more than one year of service credit.

Amended by Chapter 241, 2015 General Session

**49-12-407 Annual cost-of-living adjustment.**

- (1) The office shall make an annual cost-of-living adjustment to:
  - (a) an original allowance paid under Section 49-12-402 or 49-12-404, if the allowance has been paid for at least one year; and
  - (b) an original payment made to an alternate payee under a domestic relations order, if the payment is to be paid as a percentage of the allowance rather than a specific dollar amount.
- (2)
  - (a) The original allowance shall be increased by the annual increase in the Consumer Price Index up to a maximum of 4%.
  - (b) Annual increases in the Consumer Price Index in excess of 4% shall be accumulated and used in subsequent adjustments when the annual increase in the Consumer Price Index is less than 4%.
- (3) The Consumer Price Index used in calculating adjustments shall be a United States Bureau of Labor Statistics Consumer Price Index average as determined by the board.
- (4) The cost-of-living adjustment made under this section may not decrease the allowance.

Renumbered and Amended by Chapter 250, 2002 General Session

**49-12-408 Minimum monthly allowance.**

- (1) A retiree under this system may not receive less than \$9 per month for each year of service credit at the time of retirement.
- (2) The increased allowance provided by this section may not exceed the allowance payable under Option One under Section 49-12-402, by more than 75%.
- (3) The cost of providing this benefit shall be assumed within the contribution rate established under Section 49-12-301.

Renumbered and Amended by Chapter 250, 2002 General Session

**49-12-409 Purchase of service credit -- Conditions -- Cost -- Nondiscrimination policy.**

- (1)
  - (a) A member may purchase or a member and a participating employer may jointly purchase a maximum of five years of service credit which cannot otherwise be purchased under this title.
  - (b) At a minimum, the years of service credit purchased shall be sufficient to allow the member to meet the retirement eligibility requirements of this system with no actuarial reduction.
  - (c) The member's retirement date shall be immediately after the purchase of years of service credit.
  - (d) The member shall pay at least 5% of the cost of the purchase.
  - (e) To qualify for a purchase of service credit under this section, the member shall:
    - (i) have at least five years of service credit; and
    - (ii) otherwise meet federal eligibility requirements.
- (2) The purchase price for the years of service credit shall be calculated and paid for as provided in Section 49-11-403.
- (3) Prior to making any purchase of years of service credit under this section, a participating employer shall adopt a purchase policy that includes nondiscriminatory participation standards for all regular full-time employees.
- (4) Only members retiring from this system may purchase service credit under this section.

Amended by Chapter 116, 2005 General Session

**Part 5**  
**Death Benefit**

**49-12-501 Death benefit -- Eligibility for death benefit -- Benefit calculation -- Payment of claim -- Exclusion.**

- (1) The office shall provide a death benefit for members of this system.
- (2) The board shall make rules to administer the death benefit provided by this section and may, in accordance with federal law, establish:
  - (a) benefit levels;
  - (b) classes of members; and
  - (c) a living benefit option.
- (3) This death benefit is payable when:
  - (a) the member dies prior to the member's retirement date or dies under circumstances which Section 49-12-402 requires to be treated as the death of a member before retirement;
  - (b) the office receives acceptable proof of death; and
  - (c) benefits are not payable under Section 49-12-404.
- (4) The death benefit payable to the beneficiary under this section is a lump-sum payment consisting of:
  - (a) the return of any member contributions under this chapter; plus
  - (b) a percentage of the final average salary of the member to be determined by the board.
- (5) Any amount of a living benefit option paid to the member prior to death shall be deducted from the benefit payable to the beneficiary.
- (6) The cost of the death benefit shall be paid by the participating employer as a portion of the contribution rate established under Section 49-12-301.

- (7) The portion of the death benefit provided under Subsection (4)(b) may not be paid to the beneficiary of an inactive member unless:
  - (a) that member has 10 or more years of accrued service credit prior to July 1, 1987; or
  - (b) the death of the member occurs either:
    - (i) within a period of 120 days after the last day of work for which the person received compensation; or
    - (ii) while the member is still physically or mentally incapacitated from performance of duties, if the incapacity has been continuous since the last day of work for which compensation was received.
- (8) The death benefit provided under Subsection (4)(b) shall be paid in accordance with Sections 49-11-609 and 49-11-610.
- (9) The death benefit paid to the beneficiary of an inactive member, except as otherwise provided under Subsection (7), is a lump-sum return of the member's member contributions.
- (10) Payment of the death benefit by the office constitutes a full settlement of any beneficiary's claim against the office, and the office is not liable for any further or additional claims or assessments on behalf of the member.
- (11) Unless otherwise specified in a written document filed with the office, death benefits payable to beneficiaries shall be in accordance with the order of precedence established under Title 75, Chapter 2, Intestate Succession and Wills.
- (12) A death benefit under this section may not be paid to a beneficiary of a retiree under this system.

Amended by Chapter 316, 2013 General Session

## **Part 6 Disability**

### **49-12-601 Disability retirement -- Medical examinations -- Reemployment of retirant with a disability -- Cancellation of benefit -- Service credit -- Retirant with a disability engaging in gainful employment -- Reduction of allowance -- Refusal to submit to medical examination.**

- (1) Only members of this system who became eligible for a disability retirement allowance before January 1, 1983, are covered under this section.
- (2)
  - (a) The board may, upon the recommendation of the administrator, require any retirant who has been retired for disability and who has not attained the age of 60 years, to undergo a medical examination by a physician or surgeon, appointed by the board, at the place of residence of the retirant or other place mutually agreed upon.
  - (b) Upon the basis of the examination, the board shall determine whether the retirant with a disability is still incapacitated, physically or mentally, for service under this chapter.
  - (c) If the board determines that the retirant is not incapacitated, the retirement allowance shall be cancelled and the retirant shall be reinstated immediately to a position of the same class as that held by the retirant when retired for disability.
  - (d) If any employing unit is unable to reinstate the retirant, the board shall continue the disability retirement allowance of the retirant until employment is available.
- (3)



- (a) If a retirant with a disability under this system reenters covered service and is eligible for membership in the retirement system, the retirement allowance shall be cancelled and the retirant shall immediately become a member of the retirement system.
- (b)
  - (i) The member's individual account shall be credited with an amount which is the actuarial equivalent, at the time of reentry, based on a disabled life, of that portion of the member's retirement allowance which was derived from the member's accumulated contributions.
  - (ii) The amount credited may not exceed the amount of accumulated contributions standing at the time of retirement.
- (c) Each member shall receive credit for the service in the member's account at the time of retirement.
- (4) If the retirement allowance of any retirant with a disability is cancelled for any cause other than reentry into service, the retirant shall be paid the accumulated contributions less the amounts prescribed by Subsection (6).
- (5)
  - (a) If any member retired for disability engages in a gainful occupation prior to attaining age 60, the administrator shall reduce the amount of the retirement allowance to an amount which, when added to the compensation earned monthly by the retirant in that occupation, may not exceed the amount of the final average monthly salary on the basis of which the current service retirement allowance was determined.
  - (b) If the earning capacity of the retirant is further altered, the administrator may further alter the retirement allowance as provided in this Subsection (5).
  - (c) In no event, however, may the retirement benefit be reduced below that portion of the retirant's allowance derived from the retirant's own accumulated contributions.
  - (d) When the retirant reaches age 60, the retirement allowance shall be made equal to the amount upon which the retirant was originally retired and may not again be modified for any cause.
- (6)
  - (a) If any member who retired for disability under age 60, refuses to submit to a medical examination, the retirement allowance may be discontinued until the retirant withdraws that refusal.
  - (b) If the refusal continues for one year the disability status may be cancelled and membership terminated.
  - (c)
    - (i) The retirant's accumulated contribution account shall be the actuarial equivalent on the date of the retirant's change of status, based on a disabled life, of that portion of the disability retirement allowance which was derived from the retirant's accumulated contributions.
    - (ii) The amount credited may not exceed the amount of the retirant's accumulated contributions at the time of disability retirement.

Amended by Chapter 366, 2011 General Session

## **Part 7**

### **Early Retirement Incentive**

**49-12-701 Early retirement incentive -- Eligibility -- Calculation of benefit -- Payment of costs -- Savings to be appropriated by Legislature -- Restrictions on reemployment.**

- (1) Any member of this system may retire and receive the allowance allowed under Subsection (2) if the member meets the following requirements as of the member's retirement date:
  - (a) the member is eligible for retirement under Section 49-12-401, or has 25 years of service credit;
  - (b) the member elects to forfeit any stipend for retirement offered by the participating employer; and
  - (c) the member elects to retire from this system by applying for retirement by the date established under Subsection (3)(a) or (3)(b).
- (2)
  - (a) A member who retires under Subsection (1) shall receive 2% of that member's final average salary for all years of service credit.
  - (b) An actuarial reduction may not be applied to the allowance granted under this section.
- (3) In order to receive the allowance allowed by this section, a member shall submit an application to the office as follows:
  - (a)
    - (i) For state and school employees under Level A, the application shall be filed by May 31, 1987. The member's retirement date shall then be set by the member on the 1st or 16th day of July, August, or September, 1987.
    - (ii) If a Level A member elects to retire, the executive director or participating employer may request the member to delay the retirement date until a later date, but no later than June 30, 1988.
    - (iii) If the member agrees to delay the retirement date, the retirement date shall be delayed, but service credit may not be accrued after the member's original retirement date elected by the member, and compensation earned after the member's original retirement date may not be used in the calculation of the final average salary for determining the retirement allowance.
  - (b)
    - (i) For political subdivision employees under Level B, the application shall be filed by September 30, 1987.
    - (ii) The retirement date shall then be set by the member on the 1st or 16th day of July, August, September, October, November, or December, 1987.
- (4)
  - (a) The cost of providing the allowance under this section shall be funded in fiscal year 1987-88 by a supplemental appropriation in the 1988 General Session based on the retirement contribution rate increase established by the consulting actuary and approved by the board.
  - (b) The cost of providing the allowance under this section shall be funded beginning July 1, 1988, by means of an increase in the retirement contribution rate established by the consulting actuary and approved by the board.
  - (c) The rate increase under Subsections (4)(a) and (b) shall be funded:
    - (i) for state employees, by an appropriation from the account established by the Division of Finance under Subsection (4)(d), which is funded by savings derived from this early retirement incentive and a work force reduction;
    - (ii) for school employees, by direct contributions from the employing unit, which may not be funded through an increase in the retirement contribution amount established in Title 53A, Chapter 17a, Minimum School Program Act; and
    - (iii) for political subdivisions under Level B, by direct contributions by the participating employer.
  - (d)

- (i) Each year, any excess savings derived from this early retirement incentive which are above the costs of funding the increase and the costs of paying insurance, sick leave, compensatory leave, and vacation leave under Subsections (4)(c)(i) and (c)(ii) shall be reported to the Legislature and shall be appropriated as provided by law.
- (ii) In the case of Subsection (4)(c)(i), the Division of Finance shall establish an account into which all savings derived from this early retirement incentive shall be deposited as the savings are realized.
- (iii) In the case of Subsection (4)(c)(ii), the State Board of Education shall certify the amount of savings derived from this early retirement incentive.
- (iv) The State Board of Education and the participating employer may not spend the savings until appropriated by the Legislature as provided by law.
- (5) A member who retires under this section is subject to Section 49-11-504 and Chapter 11, Part 12, Postretirement Reemployment Restrictions Act.
- (6) The board may adopt rules to administer this section.
- (7) The Legislative Auditor General shall perform an audit to ensure compliance with this section.

Amended by Chapter 144, 2016 General Session

Amended by Chapter 310, 2016 General Session